

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B06
PLR-111250-07

Date:
September 04, 2007

LEGEND:

Taxpayer	=
Manager 1	=
CPA 1	=
Manager 2	=
CPA 2	=
<u>a</u>	=
<u>b</u>	=
<u>c</u>	=
<u>d</u>	=
<u>e</u>	=
<u>f</u>	=

Dear :

We received your letter requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an election to be treated as a homeowners association under § 528 of the Internal Revenue Code for taxable years c through e. This letter responds to your request.

The information submitted and the representations made are as follows:
Taxpayer is a residential real estate management association that was formed in year a. Taxpayer relied on Manager 1 to handle all accounting, bill paying and cash management on behalf of Taxpayer. Manager 1 hired CPA 1 to prepare Taxpayer's previous income tax returns. A copy of the tax return for taxable year b shows that Manager 1 signed the return as agent for Taxpayer.

In year d, Taxpayer decided to replace Manager 1 with Manager 2 after noticing that Manager 1 was not carrying out its duties properly. Taxpayer notified Manager 1 to send all Taxpayer documents and records to the new manager and to transfer all

Taxpayer funds to new bank accounts. Manager 1 did not respond to these requests. Taxpayer discovered that Manager 1 had closed Taxpayer's bank accounts with a closing withdrawal to Manager 1. Currently, Taxpayer is unable to locate Manager 1.

In year f, Taxpayer learned through Manager 2 that the last returns filed on behalf of Taxpayer were for the taxable year b. Manager 2 and CPA 2 worked together to assemble financial information for the years for which returns had not been filed. The initial draft of the tax return for c shows that using form 1120H would be more advantageous for Taxpayer. Therefore, upon the advice of Manager 2 and CPA 2, Taxpayer submitted this request for an extension of time under § 301.9100-1 for taxable years c through e. In addition, a return for the taxable year f was recently timely filed.

Section 528 and § 1.528-1 of the Income Tax Regulations generally provide that homeowners associations meeting the requirements of § 528(c) may elect to be treated as tax-exempt organizations, but only to the extent of their exempt function income.

Section 528(c)(1) provides, in part, that the term "homeowners association" means an organization that elects (at such time and in such manner as the Secretary by regulations prescribes) to have § 528 apply for the taxable year.

Section 1.528-8(a) provides that a separate election to be treated as a homeowners association under § 528 must be made for each taxable year. This election is made by filing a properly completed Form 1120-H (or such other form as the Secretary may prescribe).

Section 1.528-8(b) provides that for taxable years ending after December 30, 1976, the election must be made not later than the time, including extensions, for filing an income tax return for the year in which the election is to apply.

Section 301.9100-1(c) provides that the Commissioner, in an exercise of discretion, may grant a reasonable extension of time under rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but not more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make the election under § 301.9100-1(a).

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish that the taxpayer acted reasonably and in good faith,

and that granting relief will not prejudice the interests of the government.

Based on the facts and representations submitted with your request, we have determined that the requirements of § 301.9100-3 have been satisfied with respect to taxable years c through e. Therefore, an extension of time is granted, until 60 days from the date of this ruling, for making an election to be treated as a homeowners association under § 528 for taxable years c through e.

We note, however, that the burden is upon Taxpayer to produce, upon request, any records necessary to establish to the satisfaction of the Service that Taxpayer meets all of the requirements of § 528(c)(1).

Except as expressly ruled herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter or under any other provisions of the Code. Moreover, we express or imply no opinion concerning the assessment of interest, additions to tax, additional amounts, or penalties for failure to file an income tax return with respect to any year. Specifically, we express or imply no opinion whether Taxpayer qualifies as a homeowners association under § 528(c).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter should be attached to Taxpayer's election for each year covered by this ruling letter.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

William P. O'Shea
Associate Chief Counsel
(Passthroughs and Special Industries)